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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/752,250

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Ronald B. Sherer

SHERER-5

3740

7590

06/21/2006

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EXAMINER

TSIDULKO, MARK

ART UNIT

PAPER NUMBER

2875

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/752,250	Applicant(s) SHERER, RONALD B.	
	Examiner Mark Tsidulko	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 14-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23 is/are allowed.
- 6) ☒ Claim(s) 1-10, 14, 15-18, 21, 22, 24 and 25 is/are rejected.
- 7) ☒ Claim(s) 19 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

The submission of amendment filed on 2/13/2006 is acknowledged. At this point claims 11-13 have been canceled, new claims 14-25 have been added and the remaining claims left unchanged. Thus, claims 1-10 and 14-25 are at issue in the instant application.

#### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the *translucent material having different translucent properties* (claim 15, lines 3, 4) and *means for rotating said candle about its vertical axis* (claim 17, lines 1, 2) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

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pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15, 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Claim 15 contains subject matter “*translucent material comprises two portions having different translucent properties*” (lines 3, 4) which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Referring to Claim 17 it is indefinite what is *means for rotating said candle about its vertical axis*.

The status of Claim 17 (i.e. if allowable or not) can not be determined because of the vagueness of the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 9, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilgore (US 5,422,803) in view of Jensen et al. (US 6,802,297).

Referring to Claim 1 Kilgore discloses (Fig.5) a wall mount [12] including a means [18] for mounting to the wall and electric candle [28].

Kilgore discloses the instant claimed invention except for a cavity for a battery and an electrical conductive means connecting the battery to the candle.

Jensen et al. disclose (Fig.2) a decorative lamp having a wall mount (combination of holder [130] and clip [34]) including a battery [142] disposed in a cavity and electrical conductive means [156] connecting the battery to the candle.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the wall mount having a cavity in order to place a battery for the purpose of supplying an electrical power to the light source.

Referring to Claim 9 Kilgore discloses (Fig.5) a wall mount [12] including a means [18] for mounting to the wall and electric candle [28].

Kilgore discloses the instant claimed invention except for a cavity for a battery and an electrical conductive means connecting the battery to the candle.

Jensen et al. disclose (Fig.2) a battery disposed in a cavity and electrical conductive means [156] connecting the battery to the candle.

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It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the combination of the candle of Jensen et al. and attachment means of Kilgore in order to mount the battery powered electrical candle device to the wall.

Referring to Claim 18 Kilgore discloses the instant claimed invention except for a plastic portion and a wax portion.

Jensen et al. disclose a part [14] having appearance of a wax (col. 1, lines 66, 67; col.2, line 1) and a second part, which is a cap [18] made of translucent materials (col.3, lines 9, 10). One having ordinary skill in the art would have recognized to provide the cap [18] made of any known type of translucent plastic to prevent the light source from damage from external impacts and obtain a decorative appearance.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the combination of the candle of Jensen et al. having wax portion and plastic portion, and attachment means of Kilgore, in order to prevent the light source from damage from external impacts and obtain a decorative appearance.

Claims 2, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilgore and Jensen et al. as applied to claim 1 above, and further in view of Tang (US 6,902,293) and Yang (US 5,461,264).

Kilgore and Jensen et al. disclose the instant claimed invention except for a battery means for supplying different voltages and switch.

Tang discloses (col.5, line 1) a lighting device having batteries of different voltages (col.5, lines 64, 65).

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Use different voltages allow obtaining different light intensity.

Yang discloses a control circuit of battery including at least two battery units (col.6, lines 12-16) and a switch supplying different voltages (col.6, lines 1-4).

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the battery means of Tang and switch of Yang, for the device of Kilgore and Jensen et al., in order to obtain variable light distribution.

Claims 10 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilgore and Jensen et al. as applied to claims 9 and 1 above, and further in view of Tang (US 6,902,293).

Referring to Claim 10 Kilgore and Jensen et al. disclose the instant claimed invention except for a battery means for supplying different voltages.

Tang discloses this limitation (col.5, line 1). Using different voltages allows obtaining different light intensity.

Referring to Claim 22 Kilgore and Jensen et al. disclose the instant claimed invention except for a second cavity for a battery.

Tang discloses (col.5, line 1) a lighting device having batteries of different voltages (col.5, lines 64, 65). Second battery cavity can be used for the additional batteries having different voltages in order to obtain different light intensity of the light source.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the battery means of Tang for the device of Kilgore and Jensen et al., in order to obtain variable light distribution, and provide the device of Kilgore and Jensen et al. having second cavity for additional batteries, as taught by Tang, since it has been held that

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mere duplication of essential working parts of a device involves only routine skill in the art. *St.*

*Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claims 3, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilgore and Jensen et al. as applied to claim 1 above, and further in view of Morrison (US 6,241,362).

Kilgore and Jensen et al. disclose the instant claimed invention except diffuser.

Morrison discloses (Fig.3) a decorative lamp having a diffuser [30d] (col.8, lines 12-14) surrounded the candle.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide diffuser surrounded the candle, as taught by Morrison, for the device of Kilgore and Jensen et al., in order to obtain uniform light intensity distribution.

Claims 4-6, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber (US 4,107,770) in view of Jensen et al. (US 6,808,297).

Weber discloses (Figs.5, 6) a chandelier including a body [30] having a cavity, a plurality of arms [A] connected to the body, each having a cavity, and the electrical candles [50] mounted on the arms.

Weber discloses the instant claimed invention except for batteries.

Jensen et al. disclose (Fig.2) a battery disposed in a cavity and an electrical conductive means [156] connecting the battery to the candle. Use the battery allows providing illumination in case the external power failure occurs.



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It is understood that the battery can be disposed in any cavity of the device, having enough space.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the chandelier of Weber having a battery, as shown by Jensen et al. in order to obtain the local power source if the AC power is out of order.

Referring to Claim 8 Weber discloses (Figs.5, 6) a chandelier including a body [30] having a cavity, a plurality of arms [A] connected to the body, each having a cavity and the electrical candles [50] mounted on the arms.

Weber discloses the instant claimed invention except for batteries.

Jensen et al. disclose (Fig.2) a battery disposed in a cavity and electrical conductive means [156] connecting the battery to the candle.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the combination of the candle of Jensen et al. and chandelier of Weber in order to mount the battery powered electrical candle device to the ceiling.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weber and Jensen et al. as applied to claim 4 above, and further in view of Aramaki (US 6,142,439).

Weber et al. disclose the instant claimed invention except for a medallion mounted to a ceiling and having cavity and a battery positioned in the cavity.

Aramaki discloses (Fig.5) a fixed part [2] having a frame [12], which provides the same function, as a medallion of the instant application (to fix chandelier to the structure), and a battery disposed in the frame [12] (col.5, lines 23, 24).

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It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the medallion of the chandelier of Weber et al. with the battery, as taught by Aramaki, in order to obtain the local power source if the AC power is out of order.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kilgore and Jensen et al., as applied to claim 1 above, and further in view of Burks (US Des.435,674).

Kilgore and Jensen et al. discloses the instant claimed invention except for that the candle includes vertically higher and lower portions.

Burks discloses (Fig.2) this limitation.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide candle of Kilgore and Jensen et al. having vertically higher and lower portions, as shown by Burks, in order to obtain decorative appearance.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kilgore and Jensen et al., as applied to claim 1 above, and further in view of DeKay (US 4,713,734).

Kilgore and Jensen et al. disclose the instant claimed invention except for that the wall mount is composed of wood with a reflective portion.

DeKay discloses a wall lamp made of suitably finished wood for attractive appearance (col.3, lines 17-19).

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It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the lamp of Kilgore and Jensen et al. having a wall mount made of polished wood, as taught by DeKay, for the purpose of the attractive appearance.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kilgore and Jensen et al., as applied to claim 1 above, and further in view of Blackburn (US 2004/0037069).

Kilgore and Jensen et al. disclose the instant claimed invention except for a rechargeable battery.

Blackburn discloses (Fig3, 4) an electronic candle having a rechargeable battery [7] and removable charger [10] in order to provide the power source, which can be renewed repeatedly (page 1, [0013]).

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the device of Kilgore and Jensen et al. with the rechargeable battery, as taught by Blackburn, in order to increase the service life of the device.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weber and Jensen et al., as applied to claim 4 above, and further in view of Blackburn (US 2004/0037069).

Weber and Jensen et al. disclose the instant claimed invention except for a rechargeable battery.

Blackburn discloses (Fig3, 4) an electronic candle having a rechargeable battery [7] and removable charger [10] in order to provide the power source, which can be renewed repeatedly (page 1, [0013]).

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It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the device of Weber and Jensen et al. with the rechargeable battery, as taught by Blackbourn, in order to increase the service life of the device.

***Allowable Subject Matter***

Claims 19, 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Referring to Claim 19 the prior art of record fails to show a wall sconce including an electrified candle having a wax portion, wherein a wax portion has a raised and lower portions.

Referring to Claim 20 the prior art of record fails to show a wall sconce including an electrified candle having a plastic portion that has an upper portion with different vertical height.

Claim 23 is allowed, because the prior art of record fails to show an electrified candle including a vertically extending body having a first portion extending upwardly to a first level, and a second portion extending upwardly to a second level above the first level.

***Response to Arguments***

Applicant's arguments filed 2/13/2006 have been fully considered but they are not persuasive.

Applicant argues that Kilgore does not disclose a wall mount, the window is not a wall, because a wall is opaque structure.

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In response, the wall may be made of any material, for example may be a glass wall, what is well known in the art. The Examiner does see any reason, why the holder of Kilgore can not be used for attaching the light source to the wall, same as to the window, floor, ceiling, etc.

Applicant argues that the control circuit including a switch for providing a different voltage from the battery unit shown by Yang is non-analogous art.

In response, the Examiner is aware, that the control circuit including the switch is not disclosed by class 362, because it is not an illumination device, but as clearly understood by those skilled in the art, can be used for any desired device, including lighting, in order to control the voltage to change the light intensity.

Applicant argues that references of Weber and Jensen can not be combines, because Jensen et al. does not show a chandelier, but is a table mounted candle.

In response, the Examiner would like to direct the Applicant's attention to the fact, that Jensen et al. never said that his lamp is a table mounted. As disclosed in the reference "*the present invention relates to the field of electric lamps, and more particularly to candle-shaped lamps*" (col.1, "Field of the Invention"). The chandelier of Weber includes a plurality of arm supported the decorative candle-shaped lamps, and the Examiner does not see any reason, why the candle-shaped lamp of Jensen et al. can not by used for chandelier of Weber.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Tsidulko whose telephone number is (571)272-2384. The examiner can normally be reached on 8 - 5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M.T.  
June 1, 2006



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